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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

RANDY TIMMY JOHNSON,

Defendant and Appellant.

B218904

(Los Angeles County
Super. Ct. No. SA067188)

APPEAL from a judgment of the Superior Court of Los Angeles County. Scott T. Millington, Judge. Affirmed.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

FACTS AND PROCEDURAL BACKGROUND

On April 15, 2008, Randy Timmy Johnson pled no contest to one count of possession of a controlled substance and to having three prior convictions for which he served prison terms. (Health & Saf. Code, § 11377, subd. (a); Pen Code, § 667.5, subd. (b).) On May 30, 2008, the court ordered Johnson to submit to a drug treatment facility and placed him on formal probation for three years under the provisions of Proposition 36 with 14 days of presentence credit. Among the terms and conditions of his probation, Johnson was subject to periodic random drug tests, search at any time with or without probable cause or a warrant and various fines. Johnson was also ordered “not [to] use or possess any narcotics, dangerous or restricted drugs or associated paraphernalia, except with a valid prescription and [to] stay away from places where users or sellers congregate. Do not associate with drug users or sellers unless attending a drug treatment program.”

On October 9, 2008, Johnson failed to appear at a hearing to show proof of enrollment in a Level 3 residential treatment program. As a result, the trial court revoked his probation and terminated his participation in the Proposition 36 program. His probation was reinstated on October 20, 2008 when Johnson admitted to a probation violation. The superior court awarded him an additional 27 days of credit. Johnson continued to comply with his drug treatment requirements and was found to have successfully completed residential treatment on March 11, 2009.

On March 10, 2009, Culver City Police Officer Tamara Encina and her partner approached Johnson at the Astro Motel on Sepulveda Boulevard. Officer Encina knew the Astro Motel to be a place with significant drug activity. Although he did not appear to be under the influence, Encina asked Johnson for identification. He gave them his probation identification card. He also told the officers he had search and seizure conditions as part of his probation and gave them a key to his motel room. They found in plain sight on the table his driver’s license, .27 grams of methamphetamine and a glass pipe, which appeared to have been recently used for smoking.

At a September 9, 2009 probation violation hearing, Johnson testified that he had just gotten out of a residential treatment facility that morning and had rented the room for one night until he could go home. He had been in the room with a woman named Sarah. The drugs and glass pipe belonged to Sarah. Johnson further testified that he had not used drugs and did not intend to use drugs that day. However, he knew Sarah had methamphetamine and watched her smoke it before she left.

The court found him in violation of the terms and conditions of his probation and sentenced him to the low term of 16 months. The court also awarded him 88 days of actual custody credit plus 44 days of good time/work time credit. On January 21, 2010, Johnson moved ex parte to amend the abstract of judgment to reflect an award of 222 days of presentence custody credits (178 of actual custody credit + 44 days of good time/work time credit). The additional 90 days credit reflected the time he spent successfully completing the court ordered residential treatment program. (Pen. Code, § 2900.5.) Johnson's ex parte motion was granted by the superior court on January 29, 2010 and he was granted immediate release.

Johnson filed a timely notice of appeal, and we appointed counsel to represent him in his appeal. On March 9, 2010, Johnson's appointed counsel filed an opening brief raising no issues. On the same day, we ordered Johnson's counsel to immediately send the record and a copy of his opening brief to Johnson. Within 30 days, Johnson could submit any ground of appeal, argument or contention which he wished us to consider. To date, we have not received any response from Johnson.

Our independent review of the record shows that Johnson admitted in court that he had associated with a drug user, Sarah, immediately after he left his drug treatment facility and rented a motel room in a place known for drug activity. Even if we believe that Johnson did not use drugs that day and that the methamphetamines in the motel room were not his, his admissions demonstrate a direct violation of the terms of his probation. Further, the court's sentence of the low term for his probation violation was not excessive. We are satisfied that Johnson's appointed counsel has fulfilled his duty, and

that no arguable issues exist. (*See People v. Wende* (1979) 25 Cal.3d 436; *People v. Kelly* (2006) 40 Cal.4th 106.)

DISPOSITION

The judgment is affirmed.

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BIGELOW, P. J.

We concur:

RUBIN, J.

FLIER, J.